

Senate Study Bill 3095 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON KREIMAN)

A BILL FOR

- 1 An Act relating to judgment liens on homesteads.
- 2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 624.23, subsection 2, Code 2009, is
2 amended to read as follows:

3 2. a. Judgment liens described in subsection 1 do not
4 ~~remain a lien upon~~ attach to real estate of the defendant,
5 ~~platted occupied~~ as a homestead pursuant to section
6 ~~561.4, chapter 561,~~ except as provided in section 561.21 or if
7 the real estate claimed as a homestead exceeds the limitations
8 prescribed in sections 561.1 through 561.3.

9 b. A claim of lien against real estate claimed as a
10 homestead is barred unless execution is levied within thirty
11 days of the time the defendant, ~~or~~ the defendant's agent,
12 or a person with an interest in the real estate has served
13 written demand on the owner of the judgment. The demand
14 shall state that the lien and all benefits derived from the
15 lien as to the real estate ~~platted as~~ alleged to be or to
16 have been a homestead shall be forfeited unless the owner
17 of the judgment levies execution against that real estate
18 within thirty days from the date of service of the demand.
19 The demand shall contain an affidavit setting forth facts
20 indicating why the judgment is not believed to be a lien
21 against the real estate. A warranty of title by a former
22 occupying homeowner in a conveyance for value constitutes a
23 claim of exemption against all judgments against the current
24 homeowner or the current homeowner's spouse not specifically
25 exempted in the conveyance. Written demand shall be served
26 in any manner authorized for service of original notice under
27 the Iowa rules of civil procedure or in a manner provided
28 in section 654.4A, subsections 1 through 3. A copy of the
29 written demand and proof of service of the written demand
30 shall be ~~recorded~~ filed in the ~~office of the county recorder~~
31 ~~of the county where the real estate platted as a homestead is~~
32 ~~located~~ court file of the case in which the judgment giving
33 rise to the alleged lien was entered.

34 c. A party serving a written demand under this subsection
35 may obtain an immediate court order releasing the claimed lien

1 by posting with the clerk of court a cash bond in an amount of
2 at least one hundred twenty-five percent of the outstanding
3 balance owed on the judgment. A copy of the court order shall
4 be served along with a written demand under this subsection.
5 Thereafter, any execution on the judgment shall be against the
6 bond, subject to all claims and defenses which the moving party
7 had against the execution against the real estate, including
8 but not limited to a lack of equity in the property to support
9 the lien in its proper priority. The bond shall be released
10 by the clerk of court upon demand of its principal or surety
11 if no execution is ordered on the judgment within thirty days
12 of completion of service of the written demand under this
13 subsection.

14 EXPLANATION

15 This bill specifies that a judgment lien does not attach to
16 real estate claimed as a homestead except as provided in Code
17 section 561.21 (certain prior debts, certain debts created by
18 written contract, certain home improvement debts, and if there
19 is no survivor or issue, certain debts to which the homestead
20 might have been subject to if it had never been held as a
21 homestead) or if the real estate claimed as a homestead exceeds
22 the physical limitations prescribed in Code sections 561.1
23 through 561.3.

24 The bill provides that a warranty of title by a former
25 occupying homeowner in a conveyance for value constitutes a
26 claim of exemption against all judgments against the current
27 homeowner or the current homeowner's spouse not specifically
28 exempted in the conveyance.

29 The bill provides that a claim of lien against a homestead
30 is barred unless execution is levied within 30 days of the
31 time the defendant, the defendant's agent, or a person with an
32 interest in the real estate has served written demand on the
33 owner of the judgment accompanied by an affidavit setting forth
34 facts indicating why the judgment is not believed to be a lien
35 against the real estate. The written demand shall be served in

1 any manner authorized for service of original notice under the
2 Iowa rules of civil procedure or in a manner provided in Code
3 section 654.4A, subsections 1 through 3 (service of process
4 procedures relating to in rem relief).

5 The bill provides that a party serving a written demand
6 under the bill may obtain an immediate court order releasing
7 the claimed lien by posting a cash bond in an amount of at least
8 125 percent of the outstanding balance owed on the judgment.
9 Thereafter, any execution on the judgment shall be against the
10 bond, subject to all claims and defenses which the moving party
11 had against the execution against the real estate, including
12 but not limited to a lack of equity in the property to support
13 the lien in its proper priority. The bill requires the bond
14 to be released by the clerk of court upon demand of the bond's
15 principal or surety if no execution is ordered on the judgment
16 within 30 days of completion of service of the written demand
17 under the bill.